

12 May 2016

TO: The Compact of Cape Cod Conservation Trusts Board of Directors

FROM: Mark H. Robinson, Executive Director

RE: First 12 years of use of the CR and charitable trust overlays of legal protection to land trust lands.

1. All Cape Cod land trusts in the Compact have voted to pursue overlay protections of their fee simple landholdings. Orleans initiated the first use of charitable trusts between land trusts as an elegant (less paperwork, no town or state approvals) alternative to conservation restrictions (CRs) in 2004.
2. In this situation, the term charitable trust is being used as a legal doctrine, not an entity. Some people are confused by that. Others think of a charitable trust as a simple deed restriction. It is not.
3. Some confuse the charitable trust doctrine with a CR in its intent and application.
  - a. Similarities:
    - i. both equally effective to protect property in perpetuity
    - ii. both have legal precedent and would involve AG defense
    - iii. charitable trusts and CR overlays both create a default position of the land as in conservation status, rather than an unprotected, convertible asset of the organization
  - b. Differences:
    - i. charitable trust arrangements seem preferable by most land trusts
    - ii. no micro-managing of land stewardship with charitable trusts
    - iii. no annual monitoring expectation of charitable trusts as there are with CRs
4. Orenda Wildlife Land Trust and The Compact have both arranged charitable trusts and CRs for land trusts' properties. Orenda charges \$5000 minimum for a legal defense fund established for it to hold overlays with each land trust; Orenda requires the lands not be open to hunting. Compact charges \$10,000 and is silent on hunting, leaving it to the local land trust's policy. Orenda and Compact each hold charitable trusts with seven local land trusts.
5. One off-Cape land trust (Sippican LT in Marion MA) has duplicated our charitable trust arrangement for its lands, using Buzzards Bay Coalition for that role. The Greater Worcester Land Trust has also shown interest for some of its lands.
6. By creating a default position of conservation for these lands, several proposals have been warded off (preempted before they got too far): purchase by abutter for nitrogen credit for house expansion; land swap to get house rebuild out of floodplain and onto higher conservation land; town proposal for new road through land trust land for an affordable housing convenience; land swap with abutter who needed a few feet of road frontage for a second unit.
7. In 2012, M.G.L. Ch. 203E was adopted, enabling both the donor and the Attorney General to enforce the provisions of a charitable trust. This clarifies the legal standing of The Compact and Orenda to enforce the charitable trusts it holds with each of its seven land trusts.
8. The premier municipal law firm in Massachusetts (Koppelman & Paige, P.C) opined in 2012 that land trust properties that have an overlay of protection, either through CR or charitable trusts, should be exempt from road betterments because they cannot be developed. This could include other public infrastructure betterments (water, sewer). Several assessors (Brewster, Orleans, Wellfleet, Harwich) have acknowledged the charitable trusts as dramatically reducing the assessed value of land trust lands.
9. Some Cape towns have pursued "blanket CRs" for their Land Bank or CPA-funded open space parcels (Yarmouth complete; Dennis and Chatham pending) with their local land trusts holding the CR. The CPA Fund allows for towns to reimburse land trusts for these CRs. Town of Yarmouth voted \$12,000 to its land trust to hold the blanket CR. Chatham has proposed asking the land trust to invoice it for its monitoring costs each year.
10. There have been no unintended negative consequences, and, in fact, some new positive ones since the idea took hold on the Cape 12 years ago. The Cape land trust community is leading the way on this.